

HOUSE BILL NO. 602

INTRODUCED BY J. WARD

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 7, OF THE MONTANA CONSTITUTION PROVIDING THAT JUDICIAL SALARIES MAY NOT BE PAID IF CASES ARE NOT DECIDED WITHIN 90 DAYS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, justice delayed is often justice denied for individuals, families, businesses, associations, and local governments; and

WHEREAS, the law in Montana from 1917 to 1983, as enacted by the Legislature, directed that a Montana Supreme Court Justice or District Court Judge had to file an affidavit stating that the Justice or Judge had no causes, motions, or other proceedings submitted for a decision as to which 90 days had passed without a decision not caused by sickness or casualty, otherwise the State Auditor could not issue a warrant to pay the Judge or Justice; and

WHEREAS, in 1982 District Court Judge Coate sued the State Auditor challenging the statute; and

WHEREAS, the Montana Supreme Court, in the case of Coate v. Omholt, 203 Mont. 488 (1983), ruled in favor of District Judge Coate and found the statute unconstitutional for being in violation of three provisions of the 1972 Montana Constitution and a provision of the United States Constitution; and

WHEREAS, courts now have no fixed deadline by which they are required to decide causes, motions, and proceedings submitted to them for a decision; and

WHEREAS, lower court judges and individuals and attorneys with cases submitted and pending before the Supreme Court or District Courts are reluctant to ask a Justice or District Court Judge when a pending decision will ultimately be issued out of fear of alienating the Justice or the District Court Judge and jeopardizing the outcome of the case; and

WHEREAS, the Legislature has deadlines that it is required to meet in considering bills and resolutions and passing a balanced 2-year budget in 90 legislative days or less; and

WHEREAS, the Executive Branch agencies and the Governor have numerous deadlines that they are required to satisfy under the Montana Administrative Procedure Act and state and federal programs that they administer; and

WHEREAS, numerous other states' courts, including those from Alaska, Arizona, California, Minnesota, Oregon, and Washington, since approximately the 1800s, have been required by their state constitutions or statutes to decide cases submitted to them within a certain time or face pay sanctions; and

WHEREAS, today's modern technology and computerized legal research and writing tools available to Justices and Judges and their clerks are far superior to those in 1917 or 1983; and

WHEREAS, unlike in other states, Montana's citizens, representatives of businesses, associations, and other organizations involved in the judicial system face unknown financial costs, economic and emotional hardships, personal and property rights that are in limbo, and feelings of helplessness and uncertainty in matters pending before Justices and Judges because of a lack of deadlines governing judicial decisions; and

WHEREAS, deadlines for the issuance of decisions may be of assistance in the planning and analyzing of workloads.

THEREFORE, the Legislature of the State of Montana finds that good government requires that all three branches of Montana government be accountable to the public for completing their work by set deadlines and that the Constitution of the State of Montana needs to be amended to establish enforceable judicial decisionmaking deadlines and sanctions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article VII, section 7, of The Constitution of the State of Montana is amended to read:

"Section 7. Terms and pay. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office, except as provided in subsection (2) and any laws enacted pursuant to subsection (2).

(2) (a) A state or local government official or employee shall not issue a warrant in payment of the salary of a justice, judge, or justice of the peace of a court established by this constitution or by a statute until the supreme court or a judge or justice of the peace has filed with that official or employee an affidavit stating that no cause, motion, or other proceeding to be decided by the court has remained pending and undecided for a period of 90 days or more after it was submitted for decision, unless the failure to decide the matter was caused by sickness or injury suffered by one or more members of the court and the affidavit states that fact.

(b) The clerk of a court subject to this subsection (2) shall immediately notify the state or local government official or employee referred to in subsection (2)(a) of the cause number and parties if 90 days or

1 more have passed since a matter was submitted to the court for a decision. The affidavit is a public record and
2 is subject to inspection by the public.

3 (c) A cause, motion, or other proceeding is considered submitted for a decision when all hearings have
4 been held and final briefs and memorandums have been submitted by all parties to the matter.

5 (d) The legislature may enact laws not in conflict with this subsection (2) that implement this subsection
6 (2).

7 ~~(2)~~(3) Terms of office shall be eight years for supreme court justices, six years for district court judges,
8 four years for justices of the peace, and as provided by law for other judges."
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10 **NEW SECTION. Section 2. Submission to electorate.** This amendment shall be submitted to the
11 qualified electors of Montana at the general election to be held in November 2006 by printing on the ballot the
12 full title of this act and the following:

13 ☐ FOR not paying the salary of a justice, judge, or justice of the peace if cases aren't decided
14 within 90 days.

15 ☐ AGAINST not paying the salary of a justice, judge, or justice of the peace if cases aren't decided
16 within 90 days.
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18 **NEW SECTION. Section 3. Severability.** If a part of this amendment is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of this amendment is invalid in one or more of its
20 applications, the part remains in effect in all valid applications that are severable from the invalid applications.
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22 **NEW SECTION. Section 4. Effective date.** If approved by the electorate, this amendment is effective
23 January 1, 2007.
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25 **NEW SECTION. Section 5. Applicability.** This amendment applies to pay periods that begin after the
26 effective date of this amendment.
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